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# Lending an "Invisible Hand" to the Navy: Armed Guards as a Free Market Assistance to Defeating Piracy

Brittany E. Pizor

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A stylized world map in a light blue-grey tone, showing the continents and major oceanic regions. It serves as a background for the top section of the cover.

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LENDING AN 'INVISIBLE HAND' TO THE NAVY:  
ARMED GUARDS AS A FREE MARKET  
ASSISTANCE TO DEFEATING PIRACY

*Brittany E. Pizor*

# LENDING AN “INVISIBLE HAND” TO THE NAVY: ARMED GUARDS AS A FREE MARKET ASSISTANCE TO DEFEATING PIRACY

*Brittany E. Pizor\**

*Piracy may be viewed to have a romantic past but modern piracy is a serious problem facing the world today. As it becomes increasingly prevalent, piracy harms the world economy with increased costs and dangers to the shipping industry. To assist navies in preventing and deterring piracy, the free market should be allowed to provide private security measures, such as armed guards, to assist in anti-piracy efforts. However, shipping companies cannot invoke the services of private security companies' armed guards until countries dismantle legal barriers. Right now, countries have anti-gun laws that restrict flagships from having guns on board and coastal countries have anti-gun policies restricting ships passing through their territorial waters from enlisting the help of armed guards. Additionally, armed guards cannot be protected by a self-defense claim if they kill a pirate attempting to attack their ship. To best dismantle these laws, an organization, such as the International Maritime Organization (IMO), should create cohesive, unified policies outlining the requirements and restrictions for ships carrying armed guards. With the support of the IMO, these new regulations can make it possible for merchant ships to protect themselves from pirates and hijackings. This will in turn bolster the efforts of navies and alleviate pressure on the world economy.*

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\* Symposium Editor, *Case Western Reserve Journal of International Law*; B.A., Political Science, Grove City College (Dec. 2008); J.D., Case Western Reserve University School of Law (expected 2013). I would like to thank Professor Michael Newton, Professor Eugene Kontorovich, and LCDR Claude Berube for taking time out of their schedule for an interview and sharing with me their vast knowledge on this subject. I would also like to thank Professor Michael Scharf and Executive Articles Editor Helena Traner for their valuable insights and guidance. Finally, I would like to thank my friends and family who constantly listened to me talk about pirates and supported me throughout the writing process. I am very grateful to all who help and supported me in this process and would not have received the honor of having the Note of the Year without their support.

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## I. INTRODUCTION

On the night of December 5th, 2001, pirates stormed a 130-foot expedition vessel off the coast of Brazil.<sup>1</sup> Pirates ran through the vessel shouting and demanding money.<sup>2</sup> Soon, gunfire broke out, and Sir Peter Blake was shot twice in the back. The pirates stole cameras

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1. See Herb McCormick, *On Yachting; Peter Blake's Legacy Spans the World*, N.Y. TIMES, Dec. 7, 2001, <http://www.nytimes.com/2001/12/07/sports/on-yachting-peter-blake-s-legacy-spans-the-world.html> (describing the accomplishments and legacy of Sir Peter Black).
  2. See *Salt of Earth and Ocean America's Cup Hero and Environmentalist Sir Peter Blake is Murdered by Brazilian Pirates*, TIME, Dec. 17, 2001, <http://www.time.com/time/world/article/0,8599,2047863,00.html>.

and Omega watches<sup>3</sup> and left one of the world's greatest yachtsmen dead at age fifty three.<sup>4</sup> Blake's friend, Australian yachtsman Chris Packer, learned a hard lesson that night. Thus, three years later, when Chris embarked on his around-the-world tour, he made sure to carry firearms to repel pirates.<sup>5</sup> Twice pirates boarded his ship and twice Packer used his firearms for protection.<sup>6</sup> While in port in Bali, Indonesia, government officials boarded Packer's yacht and arrested him for gun running, a capital offense.<sup>7</sup> Packer sat in a Bali jail uncertain if he would face a firing squad. After three long months, the Indonesian government set Packer free.<sup>8</sup>

Today, piracy is becoming more prevalent and dangerous.<sup>9</sup> Modern piracy is more serious than the piracy of the 1800s because instead of focusing on robbery and taking vessels, pirates now take hostages for high ransoms.<sup>10</sup> Pirate attacks doubled in 2008,<sup>11</sup> and again in 2009.<sup>12</sup> In 2010, pirate attacks decreased in number; however, total ransoms increased, making piracy as profitable as ever.<sup>13</sup> The year 2011 closed with 439 pirate attacks and forty-five hijackings worldwide.<sup>14</sup> As of March 2013, forty-four pirate attacks had already been attempted.<sup>15</sup> As shocking as these statistics are, even more

3. *Funeral of Yachting Hero*, BBC, Dec. 14, 2001, [http://news.bbc.co.uk/2/hi/uk\\_news/england/1710485.stm](http://news.bbc.co.uk/2/hi/uk_news/england/1710485.stm)
4. See McCormick, *supra* note 1.
5. See John Velleco, *Gun Control on the High Seas*, GUN OWNERS OF AMERICA (Apr. 13, 2009, 15:38), <http://gunowners.org/gun-control-on-the-high-seas.htm>.
6. See *id.*
7. See *id.*
8. See *id.*
9. See Roger Williams University, *Piracy and International Law Panel featuring Eugene Kontorovich*, YOUTUBE (Sept. 19, 2011), <http://www.youtube.com/watch?v=eDqJJ0eYk1M> [hereinafter Piracy Panelist].
10. See Jennifer S. Martin, *Fighting Piracy with Private Security Measures: When Contract Law Should Tell Parties to Walk the Plank*, 59 AM. U. L. REV. 1363, 1367 (2010).
11. Piracy Panelist, *supra* note 9.
12. Matt Brown, *Somali Pirate Attacks Nearly Double in 2009*, THE NATIONAL (UAE), Jan. 20, 2010, <http://www.thenational.ae/news/world/africa/somali-pirate-attacks-nearly-double-in-2009>.
13. Piracy Panelist, *supra* note 9.
14. *Piracy Attacks in East and West Africa Dominate World Report*, ICC COMMERCIAL CRIME SERVS. (Jan. 19, 2012), <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures>.
15. *Piracy & Armed Robbery News & Figures*, ICC COMMERCIAL CRIME SERVS., <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures> (last updated Feb. 27, 2013).

shocking is the fact that these incidents often go unreported.<sup>16</sup> Countries do not report pirate attacks for fear of being seen as having a "piracy problem,"<sup>17</sup> while ship owners simply pay ransoms to avoid insurance hikes.<sup>18</sup> Moreover, the extreme duress caused by pirate attacks often makes victim accounts unreliable, causing attack reports to be even more undependable.<sup>19</sup>

The current method of defeating piracy through interdiction alone cannot be successful. Navy patrols have limited effectiveness because navies cannot be omnipresent.<sup>20</sup> Capturing pirates is difficult; prosecuting and punishing them is even harder.<sup>21</sup> Universal jurisdiction should theoretically make pirate prosecutions easy, but few countries are willing to prosecute pirates.<sup>22</sup> If pirates are found guilty, the country that hosted the trial must find an appropriate punishment.<sup>23</sup> However, the punishment is usually more luxurious than the lifestyle of a pirate, thereby creating a reverse deterrent effect.<sup>24</sup>

This Note focuses on the need for commercial ships to take proactive measures against piracy by hiring armed guards and the benefits and legal obstacles of doing so. Initially, this Note explains the reemergence of piracy in modern society. Next, it examines the importance of navy efforts to address piracy. While these efforts are

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16. *See id.*

17. Ursula Daxecker & Brandon Prins, *Insurgents of the Sea: Institutional and Economic Opportunities for Maritime Piracy* 13 (unpublished article), available at [http://ursuladaxecker.weebly.com/uploads/2/6/1/8/2618117/prins\\_and\\_daxecker\\_04-18-11.pdf](http://ursuladaxecker.weebly.com/uploads/2/6/1/8/2618117/prins_and_daxecker_04-18-11.pdf).

18. *See id.*

19. *Id.*

20. Lucas Bento, *Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish*, 29 BERKELEY J. INT'L L. 399, 410 (2011) (noting that the navy cannot protect each of the 33,000 cargo ships that pass over a million square miles of pirate rich waters).

21. *See* Piracy Panelist, *supra* note 9. Navies only have a ten to fifteen minute window in which pirates can be captured before committing an attack. *Id.*

22. *See id.* (noting that 90% of captured pirates are released). Western countries find it difficult to adapt their criminal trials to an irregular criminal force. Trial expenses accumulate quickly when witnesses and evidence are rarely close to a nation capable of prosecuting pirates. Few countries are willing to pay for this cost. *Id.*

23. *See id.*

24. *See id.* When in prison convicted pirates have warm shelter and good food. Once released from prison, pirates claim asylum in the country they were held. This is particularly a problem in Europe where the pirates are usually out of prison before their thirtieth birthday. *Id.*

necessary, this Note demonstrates why navies cannot be the sole defense mechanism against piracy and why armed guards must be utilized. Accordingly, countries must change their domestic gun laws for flagships and ports while enabling armed guards to use self-defense. This Note advocates for a collective diplomatic approach to adopt unified regulations for ships with armed guards to follow. Finally, this Note will explain why critics' fears that this solution will lead to increased violence by "mercenaries" are unfounded.

## II. PIRACY REEMERGES IN A GLOBAL SOCIETY

After the heyday of piracy in the late seventeenth and early eighteenth centuries, it nearly disappeared.<sup>25</sup> Piracy had previously been encouraged by states as a way to attack enemies,<sup>26</sup> but in the late seventeenth century, naval wars ended and the need for state-sponsored piracy ceased.<sup>27</sup> Countries began treating piracy as a crime<sup>28</sup> and navies began targeting pirates.<sup>29</sup>

But in the 1980s, the explosion of world trade and shipping, made piracy a profitable business again.<sup>30</sup> This reemergence first occurred off the coast of Southeast Asia, particularly in the Strait of Malacca, one the world's key shipping routes.<sup>31</sup> This narrow body of water, through which 50% of the world's oil passes each year, makes the strait an easy and profitable target for pirates.<sup>32</sup>

Piracy next resurfaced off the coast of Somalia.<sup>33</sup> The country's weak government, poor economy, and lack of coastal police patrol contributed to a swell in piracy.<sup>34</sup> Currently, three independent governments fracture Somalia: Puntland, Transitional Federal

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25. See Daxecker & Prins, *supra* note 17, at 4-5.

26. Lawrence Azubuike, *International Law Regime Against Piracy*, 15 ANN. SURV. INT'L & COMP. L. 43, 46 (2009) (noting the similarity to state-sponsored terrorism today).

27. Milena Sterio, *Fighting Piracy in Somalia (and Elsewhere): Why More Is Needed*, 33 FORDHAM INT'L L.J. 372, 378 (2010).

28. See *id.*; see also Azubuike, *supra* note 26, at 46.

29. See Sterio, *supra* note 27, at 378.

30. See Daxecker & Prins, *supra* note 17, at 5; see also Bruce A. Elleman & Andrew Forbes, *Introduction*, in PIRACY AND MARITIME CRIME: HISTORICAL AND MODERN CASE STUDIES 2 (2010) (noting the correlation between trade and increase of piracy).

31. See Sterio, *supra* note 27, at 381.

32. See *id.* at 381-82 (describing numerous attacks that occurred in the Strait of Malacca).

33. *Id.* at 382.

34. See Bento, *supra* note 20, at 405.

Government (TFG), and Somaliland.<sup>35</sup> These governments have been unsuccessful in their battle against pirates.<sup>36</sup> Puntland not only harbors one of the major pirate organizations, but its leaders have known ties to pirates.<sup>37</sup> The Somali TFG has internationally recognized jurisdiction off its coast but it cannot control the territory.<sup>38</sup> Somaliland most successfully fights against piracy, but it lacks recognition as an independent country by any foreign government.<sup>39</sup>

Many individuals are attracted to piracy. Pirate recruits are often from professions with transferrable maritime skills, such as fishermen, sailors, and taxi-boat captains.<sup>40</sup> Decreased economic opportunities in poor countries such as Somalia create an added incentive for these individuals to turn to piratical acts.<sup>41</sup> Ninety percent of the world's trade travels on the slow, vulnerable merchant vessels that frequently transit through tight trade routes,<sup>42</sup> allowing piracy to become a successful and viable career choice, especially for those in economic distress.<sup>43</sup>

Piracy can be highly organized.<sup>44</sup> After September 11, 2001, international authorities focused attention on preventing a similar attack at sea.<sup>45</sup> Al-Qaeda showed its maritime terrorism capabilities

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35. Theodore T. Richard, *Reconsidering the Letter of Marque: Utilizing Private Security Providers Against Piracy*, 39 PUB. CONT. L.J. 411, 443 (2010).

36. *See id.* at 446.

37. *See id.* at 443–46. Puntland made efforts to curtail piracy by hiring private security companies, but the government hindered the security companies' success by supporting the piracy they hired the security guards to defeat. *Id.*

38. *See id.* at 443, 447.

39. *See id.* at 449.

40. *See* Daxecker & Prins, *supra* note 17, at 9–10.

41. *Id.* at 10.

42. *See* John S. Burnett, *The Next 9/11 Could Happen at Sea*, N.Y. TIMES, Feb. 22, 2005, <http://www.nytimes.com/2005/02/22/opinion/22burnett.html> (noting the Suez and Panama Canals, the Bab el Mandeb, the Straits of Gibraltar and the Malacca Strait as “the world’s choke points”).

43. *See* Daxecker & Prins, *supra* note 17, at 11.

44. *See* Tina Garmon, *International Law of the Sea: Reconciling the Law of Piracy and Terrorism in the Wake of September 11th*, 27 TUL. MAR. L.J. 257, 266 (2002) (discussing sophisticated piracy rings that fund large operations).

45. *See id.* at 273–74.



with attacks on the USS *Cole*<sup>46</sup> and the French supertanker *Limburg*.<sup>47</sup> Indonesian pirates also attacked the *Dewi Madrim* in March of 2003.<sup>48</sup> Instead of being concerned with robbing the ship, attackers took turns steering the ship down the congested Malacca Strait.<sup>49</sup> The incident seemed like a practice run for a terrorist attack by the Free Aceh Movement, an Indonesian separatist organization.<sup>50</sup>

Southeast Asia has become the new "hot-spot" for maritime terrorism with three primary terrorist organizations: Abu Sayyaf, Gerakan Aceh Merdeka, and Jemaah Islamiyah.<sup>51</sup> Historical and financial ties link al-Qaeda to Abu Sayyaf.<sup>52</sup> The region's extensive involvement in world trade makes terrorist activity especially dangerous to the global economy.<sup>53</sup> While the motives of piracy may be different for Somali pirates and maritime terrorists, the international community must prevent both groups from committing acts of violence at sea.

### III. SOLE RELIANCE ON NAVIES TO PREVENT PIRACY IS INADEQUATE

Navies around the world actively work to prevent and deter piracy in the 2.5 million square miles of pirate-ridden waters.<sup>54</sup> By 2013, three anti-piracy patrols and approximately thirty navies worked together to thwart pirate attacks.<sup>55</sup> The European Union Naval Force (EU NAVFOR) began operations in December 2008 and

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46. See Katherine Zimmerman, *Ten Years After 9/11: Al Qaeda's Reemergence in Yemen*, CRITICAL THREATS PROJ.: AM. ENTERPRISE INST. (Sept. 20, 2011), <http://www.criticalthreats.org/yemen/zimmerman-qaeda-reemergence-september-20-2011>. The bombing of the *USS Cole* off the coast of Yemen killed seventeen Americans. *Id.*
47. Sebastian Rotella & Esther Schrader, *Tanker Blast Likely a Terror Attack, French Say*, LA TIMES, Oct. 11, 2002, <http://articles.latimes.com/2002/oct/11/world/fg-tanker11>. A small boat rammed the side of the French oil tanker off the coast of Yemen. *Id.*
48. See Burnett, *supra* note 42.
49. See *id.*
50. See *id.*
51. See Rommel C. Banlaoi, *Maritime Terrorism in Southeast Asia: The Abu Sayyaf Threat*, NAVAL WAR COLL. REV., Autumn 2005, at 63.
52. See *id.* at 65.
53. See *id.* at 64. Four of the largest trade routes go through Southeast Asia and the value of trade through the area is on the rise. *Id.*
54. *About CMF*, COMBINED MARITIME FORCES, <http://combinedmaritimeforces.com/about/> (last visited Mar. 9, 2013).
55. *Id.*

operates under the European Common Security and Defense Policy.<sup>56</sup> The EU NAVFOR conducts Operation ATALANTA, which includes deterrence, prevention, and repression of pirate activities.<sup>57</sup> It protects vessels in the World Food Programme and the African Union Mission in Somali shipping routes.<sup>58</sup> Operation ATALANTA also assists in monitoring fishing activities off the coast of Somalia.<sup>59</sup> Currently, the EU NAVFOR consists of approximately 1,500 military personnel operating navy vessels, maritime patrol, reconnaissance aircrafts, and vessel protection detachment teams, in addition to their land-based personnel.<sup>60</sup> The force patrols about 2 million nautical miles.<sup>61</sup>

The multinational naval force, Combined Task Force 150, also assists in piracy patrols.<sup>62</sup> The force was created at the beginning of Operation Enduring Freedom<sup>63</sup> and is tasked with counterterrorism missions.<sup>64</sup> It now works to provide a stable and prosperous maritime environment in the Gulf of Aden, Gulf of Oman, Arabian Sea, Red Sea, and Indian Ocean.<sup>65</sup> France, the Netherlands, the United Kingdom, Pakistan, Canada, and Australia have taken part in commanding Combined Task Force 150.<sup>66</sup>

Combined Task Force 151 began in January 2009 as a counter-piracy force established so the U.S. Navy could work with non-western navies.<sup>67</sup> The Task Force first started as a partnership between the United States, Korean, and Turkish navies<sup>68</sup> and is now comprised of personnel from numerous coalition countries,<sup>69</sup> such as

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56. *See Mission*, EU NAVFOR SOMALIA, <http://www.eunavfor.eu/about-us/mission/> (last visited Mar. 9, 2013).

57. *Id.*

58. *See id.*

59. *See id.* (noting that it only assists shipping on a case-by-case basis).

60. *See id.*

61. *See id.*

62. *See Combined Task Force (CTF) 150*, COMBINED MARITIME FORCES, <http://www.cusnc.navy.mil/cmef/150/index.html> (last visited Mar. 9, 2013).

63. *See id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *See Combined Task Force 151*, COMBINED MARITIME FORCES, <http://www.cusnc.navy.mil/cmef/151/index.html> (last visited Mar. 9, 2013).

68. *Id.*

69. *Id.*

Pakistan and Denmark.<sup>70</sup> The Task Force operates counter-piracy missions in approximately 1.1 million square miles in the Gulf of Aden and off the eastern coast of Somalia.<sup>71</sup> China is one eastern nation that does not work with this coalition force.<sup>72</sup> Rather, China primarily focuses on protecting its own ships by sending armed convoy escorts.<sup>73</sup>

The success of the international navy response is difficult to measure because even though patrols have reduced the number of successful attacks, pirates have increased their attempted attacks.<sup>74</sup> Pirates are becoming more successful with the enlistment of modern technology, such as satellite phones and GPS devices, along with the use of previously hijacked ships used as "mother ships."<sup>75</sup> Localized successes in the Gulf of Aden have pushed pirates to expand their attack zone outside of the navies' reach.<sup>76</sup> This success would disappear if navies leave the area or spread themselves too thin.<sup>77</sup> Additionally, navies cannot prevent pirate attacks occurring in territorial waters where international law prevents them from asserting jurisdiction.<sup>78</sup>

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70. *Denmark Assumes Command of Combined Task Force 151 Bahrain*, COMBINED MARITIME FORCES (Jan. 12, 2012), <http://combinedmaritimeforces.com/2012/01/12/denmark-assumes-command-of-combined-task-force-151-bahrain/>.
71. *See Combined Task Force 151*, *supra* note 67.
72. *See* Interview with LCDR Claude Berube, United States Navy (Nov. 14, 2011).
73. James Warden, *Combined Task Force 151 Hunts Down Pirates in the Gulf of Aden*, STARS AND STRIPES (Mar. 29, 2009), <http://www.stripes.com/news/combined-task-force-151-hunts-down-pirates-in-the-gulf-of-aden-1.89695>. In 2010, China expanded their anti-piracy efforts and joined forces with the United States, NATO, and the United Nations. *See China's Anti-Piracy Role off Somalia Expands*, BBC, Jan. 29, 2010 <http://news.bbc.co.uk/2/hi/8486502.stm>; *see also Mission*, *supra* note 56.
74. *See* Christopher Alessi, *Combating Maritime Piracy*, COUNCIL ON FOREIGN REL. (Mar. 23, 2012), <http://www.cfr.org/france/combating-maritime-piracy/p18376> (noting that even if the increase in patrols reduce the number of attack, piracy is still on the rise).
75. *See* Bento, *supra* note 20, at 406.
76. *See* Interview with LCDR Claude Berube, *supra* note 72. LCDR Berube described the effect of the navies' efforts in one area to the air in a balloon being pushed. It does not go away; it will simply move to another area. *Id.*
77. *See* Alessi, *supra* note 74 (explaining how even though the patrols are effective, they are treating the symptoms and not the root cause of the problems, the instability in Somalia).
78. *See* George D. Gabal, Jr., *Smoother Seas Ahead: Draft Guidelines as an Intentional Solution to Modern-Day Piracy*, 81 TUL. L. REV. 1433, 1442 (2007) (discussing how UNCLOS does not apply in territorial waters).

While navy efforts have helped prevent successful pirate attacks, navies are better equipped to fight war, not crime.<sup>79</sup> Long-standing naval tradition focuses on conflict between countries.<sup>80</sup> Navies are not equipped to protect every ship traversing the high seas. Moreover, countries often reject naval escorts through pirate-infested waters because the cost to a navy is too high.<sup>81</sup> With a limited resources, funding, and personnel, navies cannot defeat piracy on their own.<sup>82</sup>

#### IV. FREE MARKET SOLUTIONS, SUCH AS ARMED GUARDS TO PROTECT SHIPS, SHOULD BE ALLOWED TO ASSIST NAVIES BY SERVING AS DETERRENTS AGAINST PIRACY

Limited capabilities and resources restrict countries' abilities to use navies to enforce security measures against piracy.<sup>83</sup> The navies' inability to be omnipresent and protect all ships traveling through pirate-infested waters opens up a lucrative market for private security companies.<sup>84</sup> Private security options can alleviate the high costs that piracy creates for governments and shipping companies.<sup>85</sup> With private security measures, the cost of lost goods and ransoms

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79. See Peter Andreas & Richard Price, *From War Fighting to Crime Fighting: Transforming the American National Security State*, INT'L STUD. REV., Fall 2001, at 31, 32 (discussing how the militaries have traditionally focused on countries in war fights); Colonel Robert B. Killebrew, *Crime and War*, U.S. NAVAL INST. (Oct. 2011), <http://www.usni.org/magazines/proceedings/2011-10/crime-and-war> (noting the military's most important change right now is shifting their focus to fight "crime, terrorism, and insurgency").
80. See Andreas & Price, *supra* note 79, at 31, 32; Killebrew, *supra* note 79.
81. See, e.g., Catherine Bolsover, *Germany is Close to Deploying 'Mercenaries' to Protect Ships from Pirates*, DW (Aug. 18, 2011), <http://www.dw.de/germany-is-close-to-deploying-mercenaries-to-protect-ships-from-pirates/a-15325923-1>.
82. See Ron Paul: *Responses to Piracy*, YOUTUBE (Apr. 21, 2009), <https://www.youtube.com/watch?v=Da15g61L1Wk>.
83. See Richard, *supra* note 35, at 417 (discussing the demands of private security to assist the government); see also Daniel Straub, *Outsourcing Human Security: Private Security Companies and Peacekeeping 15* (APSA Annual Meeting Paper, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1902525](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1902525) (noting that the United Nations, countries acting individually, or countries acting collectively cannot solve all the world's problems).
84. See Andrew J. Shapiro, Ass't Sec'y, Bureau of Political-Military Affairs, Remarks to the Defense Trade Advisory Group (Nov. 9, 2011), available at <http://www.state.gov/t/pm/rls/rm/176925.htm>.
85. See Richard, *supra* note 35, at 417. The shipping industry suffers from high insurance premiums, costly delays and diversions, and extortionate ransom demands. *Id.*

disappears and insurance rates decrease, sometimes up to 40%.<sup>86</sup> The U.S. Navy encourages ships to take advantage of these proactive security measures.<sup>87</sup>

Private security measures are effective in combating piracy.<sup>88</sup> To date, pirates have not successfully taken a ship protected by armed security guards.<sup>89</sup> With an onboard, armed security team, a ship's crew is protected without using the U.S. Navy's resources. The *Maersk Alabama* provides a telling example of the success that private armed guards have protecting ships.<sup>90</sup> In April 2009, the U.S. naval destroyer, the USS *Bainbridge*, came to the rescue of the *Maersk Alabama* after pirates took over the ship.<sup>91</sup> At the time, the ship had no onboard security team.<sup>92</sup> In order to free the ship's captain, who the pirates took hostage in the attack, the Navy Seal snipers killed the three captors.<sup>93</sup> In November 2009, pirates again attempted to attack the *Maersk Alabama*.<sup>94</sup> This time, an onboard security team, using small firearms, acoustical devices, and evasive maneuvers, fended off the attack.<sup>95</sup>

Shipping companies are beginning to understand the importance and success of preventative measures and are actively seeking armed guards.<sup>96</sup> However, armed security guards must follow the regulations

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86. See Katharine Houreld, *AP IMPACT: Security Firms Joining Somali Piracy Fight*, USA TODAY, Oct. 26, 2008, [http://www.usatoday.com/news/world/2008-10-26-2583935117\\_x.htm](http://www.usatoday.com/news/world/2008-10-26-2583935117_x.htm) (explaining how recently insurance rates skyrocketed for ships traveling through pirate infested waters, but insurance companies slash rates for ships who hire armed guards).
87. See *id.* (noting the spokesman for the Baharin-based United States 5th Fleet, Lieutenant Nate Christensen, supports the proactive safety measures offered by the free market).
88. See Shapiro, *supra* note 84 (announcing the United States support for the use of armed guards because they have proven to be successful).
89. *Id.*
90. See *Maersk Alabama Crew Recalls Pirate Attack*, USA TODAY, Apr. 17, 2009, <http://www.usatoday.com/news/nation/2009-04-16-piratesN.htm>.
91. See *id.*
92. See *id.*
93. See *id.*
94. See Alan Cowell, *Pirates Attack Maersk Alabama Again*, N.Y. TIMES, Nov. 18, 2009, <http://www.nytimes.com/2009/11/19/world/africa/19pirates.html>.
95. See *id.*
96. See Interview with LCDR Claude Berube, *supra* note 72; see also Gus Trompiz, *Marine Insurers Backing Armed Guards as Piracy Threat Grows*, INSURANCE J., Sep. 20, 2011, <http://www.insurancejournal.com/news/international/2011/09/20/216642.htm> (noting how

of the flagship country, territorial waters, and ports they travel through.<sup>97</sup> Some countries have begun to change gun laws for both the flagships and territorial waters, recognizing the need for laws allowing armed guards to utilize the legal defense of self-defense.<sup>98</sup> Private security firms cannot enhance the navies' efforts until these legal barriers have been dismantled.

*A. Legal Barriers Make It Difficult for Shipping Companies to Hire Armed Guards to Protect Ships.*

1. Gun control laws make it difficult for merchant ships to allow armed guards to accompany ships.

Ships are subject to many different laws and regulations that hinder their ability to hire armed guards.<sup>99</sup> Countries exercise jurisdiction over ships that sail under their flag,<sup>100</sup> and coastal countries exercise jurisdiction over ships that innocently pass through their territorial waters,<sup>101</sup> which includes coastal countries' ability to exercise limited criminal jurisdiction over ships.<sup>102</sup> For example, a country may impose criminal liability on a ship's crewmembers for disruption of the peace.<sup>103</sup> If a ship is attacked by pirates in a country's territorial waters and a pirate is killed in the squabble, both the flag state and the territorial state can exercise criminal jurisdiction.<sup>104</sup> If just one of these jurisdictions prohibits guns, merchant ships will be unable to hire armed guards.

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shipping companies were first reluctant to hire armed guards because of potential legal liabilities).

97. *See generally* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 (defines the rights and responsibilities for vessels at sea) [hereinafter UNCLOS].
98. *See* Interview with LCDR Claude Berube, *supra* note 72 (noting the recent changes in laws).
99. *See* The Swedish Club, Piracy & Use of Armed Guards: General Overview 3–5 (Members' Alert, undated), *available at* [http://www.swedishclub.com/upload/Loss\\_Prev\\_Docs/Piracy/PIRACY\\_and\\_USE\\_OF\\_ARMED\\_GUARDS\\_-\\_General\\_overview.pdf](http://www.swedishclub.com/upload/Loss_Prev_Docs/Piracy/PIRACY_and_USE_OF_ARMED_GUARDS_-_General_overview.pdf) (explaining that ships must comply with different regulations and licensing schemes of many different jurisdictions the ship will come into contract with).
100. UNCLOS, *supra* note 97, art. 94(1).
101. *Id.* art. 17.
102. *Id.* art. 27.
103. *See* The Swedish Club, *supra* note 99, at 3–5 (outlining considerations and suggestions to be taken into account when deciding if armed guards can be on merchant ships).
104. *See id.*

As countries begin to understand the importance of free market private security measures, they are changing laws to enable flagships to carry guns for protection against pirates.<sup>105</sup> Spain was one of the first countries to allow fishing boats to carry heavy weapons.<sup>106</sup> Similarly, the United Kingdom,<sup>107</sup> Germany,<sup>108</sup> and the United States<sup>109</sup> have followed suit by making changes to their respective gun laws. In addition, the International Chamber of Shipping expressed its support for the use of armed guards off the coast of Somalia, significantly bolstering support for changing gun laws.<sup>110</sup>

Security companies work to define their services within the confines of the law. For example, one company uses a helicopter to drop a bundle of guns on a ship once the ship reaches international waters.<sup>111</sup> Before the ship leaves international waters, the crew throws the guns overboard.<sup>112</sup> Companies adopt this counterintuitive approach because it is more economical to toss guns into the sea and abide by the law than risk traveling without protection from pirates.<sup>113</sup> Another company adopted a similar model, but instead of

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105. *See infra* Appendix A.

106. *See* Analía Murias, *Heavy Weapons Allowed in Tuna Fishing Vessels in the Indian Ocean*, FISH INFO. SERVS. (Sept. 28, 2011), <http://fis.com/fis/worldnews/worldnews.asp?l=e&country=0&special=&monthyear=&day=&id=46378&ndb=1&df=0> (noting fishers could previously carry 7.62mm weapons on tuna boats but that has now been upped to 12.70mm weapons).

107. *See Somali Piracy: Armed Guards to Protect UK Ships*, BBC, Oct. 30, 2011, <http://www.bbc.co.uk/news/uk-15510467> (noting Britain wants to make it legal to carry guns only through dangerous waters).

108. *See* Bolsover, *supra* note 81 (saying that Germany is responding to the hijackings by legalizing armed guards on ships).

109. *See* Shapiro, *supra* note 84. The Somalia Report first leaked the unclassified internal memo from Hillary Clinton that stated the United States' support for armed security guards on commercial vessels. Robert Young Pelton, *U.S. Goes Public with Support for Hired Guns Against Piracy*, GCAPTAIN (Nov. 12, 2011), <http://gcaptain.com/u-s-public-support-hired-guns?33792>.

110. *See Piracy: Issues Arising From the Use of Armed Guards*, INCE & CO. (Mar. 1, 2011), <http://incelaw.com/misc/Piracy-issues-arising-from-the-use-of-armed-guards/Piracy-Issues-arising-from-the-use-of-armed-guards>. The Internal Chamber of Shipping Commerce is a trade association for the shipping industry and is involved in many international bodies including the IMO. *See Home*, INT'L CHAMBER OF SHIPPING, <http://www.ics-shipping.org/> (last visited Mar. 9, 2013).

111. *See* Piracy Panelist, *supra* note 9. Territorial waters extend 12 nautical miles off the baseline of the country at which point the sea becomes international waters. UNCLOS, *supra* note 97, art. 3.

112. *See* Piracy Panelist, *supra* note 9.

113. *See id.*

throwing the guns overboard it sends ships to retrieve the guns from the ship that is leaving international waters and entering territorial waters.<sup>114</sup>

While both types of companies provide a way for shippers to protect themselves, many pirate attacks occur in territorial waters.<sup>115</sup> In order for armed guards to provide the necessary protection against pirates, the laws of the coastal and flag countries need to allow merchant ships to hire armed guards. Countries need to amend their maritime law so ships can be protected in all seas, whether territorial or international. Countries can then continue to control safety in territorial waters through regulations<sup>116</sup> and licensing schemes.<sup>117</sup>

2. In order for armed guards to protect against piratical acts, self-defense must be a viable defense.

Only a country may use force, not private citizens.<sup>118</sup> However, when a state is unable to protect its citizens, its “monopoly of force” gives way to the private citizen’s ability to protect their own property.<sup>119</sup> The military controls force at sea,<sup>120</sup> but in the military’s absence commercial ships should be able to protect against pirates. In order for armed guards to adequately protect ships, the law of self-defense must be applicable.<sup>121</sup> While the IMO recognizes the use of firearms by private security guards,<sup>122</sup> the applicability of self-defense

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114. See Interview with LCDR Claude Berube, *supra* note 72.

115. See Daxecker & Prins, *supra* note 17, at 5; see also *infra* Appendix B (explaining select countries current regulations regarding armed guards in ports and territorial waters).

116. See Richard, *supra* note 35, at 454–55 (explain that countries can manage the risk of allowing guns on ships by establishing regulations and punishments for violations of the regulations).

117. See The Swedish Club, *supra* note 99, at 4 (noting that some countries already have licensing schemes in place).

118. See GEORGE P. FLETCHER, A CRIME OF SELF-DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL 18 (1998).

119. *Id.*

120. See Interview with Eugene Kontorovich, Law Professor, Northwestern University (Jan. 15, 2012).

121. See *id.* (explaining that in most situations where a armed guard kills a pirate, self-defense is not applicable).

122. See IMO, *Revised Interim Guidance to Shipowners, Ship Operators, and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area*, annex, § 3.5, U.N. Doc. MSC.1/Circ.1405/Rev.1 (Sep. 16, 2011) (“[Private Maritime Security Companies] should require that their personnel not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the



is not clear. Many countries have narrow laws that do not allow self-defense to be applicable for armed security guards.<sup>123</sup> For instance, an armed guard on a German flagship who kills a pirate trying to take over the ship may not be able to successfully argue self-defense.<sup>124</sup> Without self-defense, armed guards will be more apprehensive in using an appropriate amount of force to fight off pirates. Armed guards must be able to protect ships from being overtaken with the use of an appropriate amount of force.

While international law recognizes a general human right to self-defense, there is no unified understanding of self-defense.<sup>125</sup> The International Court of Justice addressed the use of force by state actors against another state, but it did not address non-state actors on the high seas.<sup>126</sup> Armed security guards would not be considered state actors, even if a country licenses their security guards.<sup>127</sup> A licensing scheme is a country's way of meeting their "duty of due diligence" to protect others from potentially dangerous situations and is not providing a "convenience" for the country to use unlawful force.<sup>128</sup>

The UN Charter recognizes a right to self-defense,<sup>129</sup> but the Human Rights Council advocates for a restriction on the private use of firearms, hindering the ability of people to defend themselves.<sup>130</sup>

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perpetration of a particularly serious crime involving grave threat to life.") [hereinafter *Revised Interim Guidance to Shipowners*].

123. See Bolsover, *supra* note 81.

124. See *id.*

125. See Interview with Eugene Kontorovich, *supra* note 120 (explaining that in most situations, self-defense would not be applicable); see generally David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense*, 22 BYU J. PUB. L. 43 (2007) (examining the legal status of self-defense and international laws for self-defense).

126. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 146 (June 27) (rejecting "the justification of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua the subject of this case").

127. See Douglas Guilfoyle, *Shooting Fishermen Mistaken for Pirates: Jurisdiction, Immunity and State Responsibility*, EJIL: TALK! (Mar. 2, 2012), <http://www.ejiltalk.org/shooting-fishermen-mistaken-for-pirates-jurisdiction-immunity-and-state-responsibility/>. For example, the United States is not responsible if a citizen uses a gun they have a license for when they kill a foreign citizen. *Id.*

128. See *id.*

129. U.N. Charter art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence. . . .").

130. See UN Human Rights Council, Sub-Comm'n on the Promotion and Prot. of Human Rights, *Adoption of the Report on the Fifty-eighth*

Furthermore, the Council's opinion is that even the strictest gun laws in the United States, such as those in Washington, D.C. and New York City, are not sufficient.<sup>131</sup> The Council states that "[t]he intentional lethal use of small arms may only be made when *strictly unavoidable* in order to protect life."<sup>132</sup> "Strictly unavoidable"<sup>133</sup> is a very high burden that will be difficult to meet.

Laws governing self-defense vary greatly from country to country.<sup>134</sup> For example, a woman in China was found not guilty of murder and to have acted in self-defense when she chased down and ran over robbers with her car.<sup>135</sup> On the other hand, the United Kingdom is clarifying its self-defense law so that homeowners can use force against burglars entering their homes.<sup>136</sup> This clarification excludes homeowners from using self-defense if the burglar flees from their home or if the homeowner was protecting a friend.<sup>137</sup> Clearly, the actions found to be self-defense by the woman in China would not be protected in the United Kingdom.

The United States is particularly pro-self-defense. The U.S. support of self-defense policies is entrenched in the society's pro-gun policies, which started with the Second Amendment.<sup>138</sup> Pro-gun

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*Session to the Human Rights Council*, ¶ 8, U.N. Doc. A/HRC/Sub.1/58/L.11/Add.1 (Aug. 24, 2006) (stating that firearms themselves can be a human rights violation).

131. See Kopel, Gallant & Eisen, *supra* note 125, at 45.

132. UN Human Rights Council, *supra* note 128, ¶ 8 (emphasis added).

133. See *id.*

134. See Interview with Eugene Kontorovich, *supra* note 120. Professor Kontorovich explained the difference between the United States and England by saying that if someone has a gun to your head in England and demands your wallet, you hand the criminal your wallet. The United States does not require handing over the wallet. *Id.*

135. See Li Shigong, *Are There Limits to Self-Defense?*, BEIJINGREVIEW.COM (Apr. 30, 2009), [http://www.bjreview.com.cn/forum/txt/2009-04/28/content\\_193066.htm](http://www.bjreview.com.cn/forum/txt/2009-04/28/content_193066.htm) (reporting how the court found that after the two men had stolen the woman's purse containing the equivalent of U.S. \$11,720, the woman was justified in claiming self-defense because the men's flight was a part of the robbery).

136. See *Right to Self-Defense in Homes to be "Much Clearer,"* BBC, June 29, 2011, <http://www.bbc.co.uk/news/uk-politics-13957587> (noting that even though England recognizes self-defenses as a defense at common law, previous doubt in the self-defense laws in the context of protecting one's home must be clarified through legislative action).

137. See *id.*

138. See U.S. CONST. amend. II ("[T]he right of the people to keep and bear arms shall not be infringed."). See also Sam Bateman, *Riding Shotgun: Armed Security Guards Onboard Merchant Ships 1* (S. Rajaratnam School of International Studies Commentary, Mar. 5, 2010), available at <http://www.rsis.edu.sg/publications/Perspective/RSIS0282010.pdf>

policies are still especially popular.<sup>139</sup> In the United States, citizens enjoy a broadly protected right to self-defense.<sup>140</sup> The Model Penal Code, which has greatly influenced criminal law in most jurisdictions in the United States,<sup>141</sup> describes self-defense as “the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.”<sup>142</sup>

Without well-defined, unified self-defense laws, armed guards will have a more difficult time protecting against pirates. The guards will either not understand when they can and cannot use force,<sup>143</sup> or, because of the lack applicable self-defense laws, they will be unable to protect the ships. Just as countries need to change their laws to be more open to allowing guns on their flag-ships and in their ports, self-defense laws must change as well.

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(noting that the United States’ history of pro-gun rights resulted from the frontier and revolutionary era in America).

139. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (deciding that an individuals have the right to bear arms and this right is unconnected to the militia service). *See also* Bateman, *supra* note 138, at 1 (noting that the United States’ history of pro-gun rights is still defended even with the United States high rate of gun violence). *But see About Us*, BRADY CAMPAIGN, <http://www.bradycampaign.org/about/> (last visited Mar. 9, 2013) (arguing that citizens have a “right to live free from the threat of gun violence” and advocating for more gun regulation).
140. *See, e.g.*, *State v. Singleton*, 974 A.2d 679, 688–89 (Conn. 2009) (noting that the defendant must only meet the burden of production with regards to self-defense; then the state then must disprove self-defense beyond a reasonable doubt); *McEwen v. State*, 695 N.E.2d 79, 90 (Ind. 1998) (finding that when the defense present supporting evidence for a claim of self-defense, the state must negate one of the necessary elements of self-defense).
141. Paul H. Robinson & Markus Dirk Dubber, *An Introduction to the Model Penal Code* 5–8 (Mar. 12, 1999), *available at* <http://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf> (explaining the influence of the Model Penal Code on the different States’ criminal systems).
142. MODEL PENAL CODE § 3.04 (1985). While the Model Penal Code does not serve as the law of any jurisdiction, it influences and guides legislatures in enacting their own jurisdictions laws. KATE E. BLOCH & KEVIN C. McMUNIGAL, *CRIMINAL LAW: A CONTEMPORARY APPROACH* 7 (2005).
143. This can depend on the laws of their flagship or the laws of the territorial waters they have entered as discussed in *supra* part III.

*B. A Collective International Response Must Support the Free Market Assistance of Private Security Companies and Armed Guards.*

In order for armed guards to protect merchant nations should adopt a collective approach in outlining regulations under which ships desiring to hire armed security guards should operate.<sup>144</sup> With private security companies from one country on a ship flagged in another country and a crew from a third, shipping companies and private security companies struggle to keep up with all applicable regulations.<sup>145</sup> A unified standard will help ships travelling to several ports on the same trip to ensure compliance with all regulations.<sup>146</sup> Without a unified standard, the assistance of private security companies will be more difficult. There are two important collective responses necessary for these advances in maritime security. First, the United Nations must affirm support for shipping companies to employ armed guards and create guidelines for such employment. Second, navies must improve communication with shipping companies in an effort to defuse piracy more quickly and protect the world economy.

1. The United Nations must affirmatively support a ship's choice to utilize the security companies and armed guards to protect against pirates.

As a specialized agency of the United Nations, the International Maritime Organization (IMO)<sup>147</sup> is in the best position to create cohesive standards so private security companies can more easily provide merchant ships with armed security guards.<sup>148</sup> The Geneva

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144. See Bento, *supra* note 20, at 415 (noting that the high sea is owned collectively by counties and thus a collective response is most appropriate). See also Interview with Eugene Kontorovich, *supra* note 120 (discussing how it would be helpful to have international guidelines).

145. See JOHN S. BURNETT, DANGEROUS WATERS: MODERN PIRACY AND TERROR ON THE HIGH SEAS 160 (2003) (referring to a "typical case" being one where "[a] ship built in Japan, owned by a brass-plate company in Malta, controlled by an Italian, managed by a company in Cyprus, chartered by the French, skippered by a Norwegian, crewed by Indians, registered in Panama, financed by a British bank, carrying a cargo owned by a multinational oil company, is attacked while transiting an international waterway in Indonesian territory and arrested in the Philippines").

146. See Interview with Eugene Kontorovich, *supra* note 120 (discussing how it would be helpful to have international guidelines).

147. *Introduction to the IMO*, INT'L MARITIME ORG., <http://www.imo.org/About/Pages/Default.aspx> (last visited Mar. 9, 2013).

148. See Interview with Eugene Kontorovich, *supra* note 120 (discussing the IMO's ability to be the organizational body to provide unified standards).

Convention established the IMO in 1948 to promote maritime safety.<sup>149</sup> Currently, the IMO has 170 members and three associate members, seventy-eight international non-governmental organizations in consultative status, and sixty-three intergovernmental organizations with agreements of co-operation.<sup>150</sup> The IMO boasts that the "best way of improving safety at sea is by developing international regulations."<sup>151</sup> Additionally, the organization is already involved in piracy prevention.<sup>152</sup>

The IMO does not presently support armed guards on ships, but it does provide some guidelines for ships that are considering or that have hired private security companies and armed guards.<sup>153</sup> The IMO has written guidelines for ship owners,<sup>154</sup> flagships countries,<sup>155</sup> and for port and coastal countries.<sup>156</sup> The guidelines for ship owners regarding security companies are the most extensive of the three drafted guidelines.<sup>157</sup> Some of the guidelines include performing a risk analysis, researching security companies, requesting documents from potential private security companies, and analyzing insurance policies, along

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149. *History of IMO*, INT'L MARITIME ORG., <http://www.imo.org/About/HistoryOfIMO/Pages/Default.aspx> (last visited Mar. 9, 2013).

150. *Membership*, INT'L MARITIME ORG., <http://www.imo.org/About/Membership/Pages/Default.aspx> (last visited Mar. 9, 2013).

151. *History of IMO*, *supra* note 140.

152. *Frequently Asked Questions*, INT'L MARITIME ORG., <http://www.imo.org/About/Pages/FAQs.aspx#18> (last visited Mar. 9, 2013) (answering the question "What is the IMO doing about piracy?").

153. *See Revised Interim Guidance to Shipowners*, *supra* note 122, annex ¶ 1 (explaining that because shipping companies may not find reliable private security companies, the IMO will not endorse their use but their popularity necessities the IMO's guidelines).

154. *See id.* annex (outlining guidelines for shipping companies to take when decided to hire private security companies to provide armed guards).

155. *See generally IMO, Revised Interim Recommendations for Flag States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area*, IMO Doc. MSC.1/Circ.1406/Rev.1 (Sept. 16, 2011) [hereinafter *Revised Interim Recommendations for Flag States*] (noting that flag countries also need to address the use of armed guards on their ships).

156. *See generally IMO, Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area*, IMO. Doc. MSC.1/Circ.1408 (Sept. 16, 2011) [hereinafter *Interim Recommendations for Port and Coastal States*] (outlining the regulations coastal countries need to address because of the movement towards armed security guards).

157. *See id.*; *Revised Interim Guidance to Shipowners*, *supra* note 122, annex; *Revised Interim Recommendations for Flag States*, *supra* note 155, annex.

with other general precautionary evaluations before they decide to hire armed security guards.<sup>158</sup>

The IMO guidelines for port and coastal countries are very general.<sup>159</sup> While the IMO recognizes the need for states to have embarkment, disembarkment, and vessel calling requirements, it has not suggested a unified international standard.<sup>160</sup> For instance, a merchant ship traveling to numerous countries will have to conduct extensive research to ensure compliance with each individual country's regulations. One small mistake could lead to a very costly arms law violation.<sup>161</sup>

The IMO's recommendations for flag countries do not address any particular laws regarding guns on flagships.<sup>162</sup> The recommendation only says that the ship's owners need to be aware of flag countries laws and that the flag countries need to address whether the ships can have armed guards on their ships.<sup>163</sup> The recommendation warns flag countries about the escalation of violence in an encounter with pirates as a result of having guns on the ships.<sup>164</sup> However, this is a concern based on an inaccurate comparison of the private armed guards with the private security guards in Iraq and Afghanistan.<sup>165</sup>

Even though the member states of the IMO are reluctant to endorse a ship's employment of armed guards,<sup>166</sup> the organization should support the shipping companies' ability to choose to hire

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158. *See generally Revised Interim Guidance to Shipowners*, *supra* note 122, annex (outlining guidelines for merchant shipping companies considering private security companies with armed guards to take).

159. *See Interim Recommendations for Port and Coastal States*, *supra* note 156, annex (outlining only what countries should address, not any specifics about how to address them or recommendations on what the regulations should be).

160. *See id.* (failing to provide any specifics about how to address issues or recommendations on what the regulations should be).

161. For example, yachtsman Chris Packer was charged with gun running in Indonesia for having guns to protect against pirates. *See Velleco*, *supra* note 5.

162. *See Revised Interim Recommendations for Flag States*, *supra* note 155, annex § 1.

163. *See id.* annex §§ 2, 4–5.

164. *See id.* annex § 3(encouraging the countries to account the possibility of violence escalating because of guns on ships).

165. *See infra* part IV(C).

166. *See Revised Interim Guidance to Shipowners*, *supra* note 155, annex § 1(explaining that because shipping companies may not find reliable private security companies, the IMO will not endorse their use).

armed guards.<sup>167</sup> The best approach for the IMO is to consider regulations by consulting those that the regulations will affect.<sup>168</sup> For example, it is important for companies that operate ships to be able to weigh in on what is feasible, for the security companies to attest to the strengths and weaknesses of the security teams, and for the coastal countries to express concerns about gun safety. The IMO should start this process with the Maritime Safety Committee, which has started to address piracy.<sup>169</sup> With the help of the committee's research and recommendations, the IMO member states can support unified regulations and adopt these regulations.<sup>170</sup> With unified regulations in place, shipping companies will be able to more carefully and efficiently ensure compliance with all laws and regulations applicable to the merchant ships they have been hired to protect ships in transit through dangerous, pirate-rich waters.

2. The individual state navies and the coalition navies must utilize assistance from security companies.

Worldwide, navies cannot adequately protect merchant ships from piracy,<sup>171</sup> but the more ships the navies have, the more "eyes" they have on the water, and the more effectively they can combat piracy.<sup>172</sup> When security companies employ armed guards to traverse waters, the companies also monitor pirate activity. Right now, navies underutilize the knowledge security companies can provide.<sup>173</sup> With navies and security companies working together, the navies' ability to pinpoint pirates will be greatly increased and the efforts to defeat piracy can become more effective.

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167. See Interview with Eugene Kontorovich, *supra* note 120 (addressing the fact that some shipping companies do not want armed security guards on their ships).

168. See *id.* (explaining that the shipping companies should be involved in the creation of regulations).

169. See *Structure of the IMO*, INT'L MARITIME ORG., <http://www.imo.org/About/Pages/Structure.aspx#3> (last visited Mar. 9, 2013) (listing the different IMO committees); see also *Revised Interim Recommendations for Flag States*, *supra* note 155, annex § 3 (noting the Maritime Safety Committee's involvement in creating the recommendations).

170. The IMO could adopt these regulations through a number of means including a convention or an amendment to a convention. See *Conventions*, INT'L MARITIME ORG., <http://www.imo.org/About/Conventions/Pages/Home.aspx> (last visited Mar. 9, 2013).

171. See *supra* Part III.

172. See Houreld, *supra* note 86 (explaining the support for private security companies in joining the fight against piracy).

173. See Interview with LCDR Claude Berube, *supra* note 72.

The U.S. Department of Justice created a report addressing a partnership between law enforcement and private security.<sup>174</sup> Even though this report was intended to assist in collaboration for community security efforts,<sup>175</sup> the analysis can easily be transferred to the efforts between the navies and private security companies combating piracy. The report outlines five important steps needed to enhance this partnership: 1) improve the communication process; 2) improve the content of the communication; 3) improve training content; 4) facilitate personal contacts among the membership; and 5) find out what other law enforcement-private security partnerships are doing.<sup>176</sup> These steps identify how navies and private security companies can create their own partnership to protect the high seas from the terror of piracy.

### *C. Criticism Falls Short*

1. Allowing armed guards on ships will not lead to more shooting.

Critics worry that armed security guards will create a "Wild West" at sea.<sup>177</sup> Pirates already come aboard with "guns blazing," in order to stop the ship and board it more easily.<sup>178</sup> Critics say that if security guards resemble the "trigger-happy" security members in Iraq and Afghanistan who do not understand the "rules of engagement," then they will quickly fire back at the pirates.<sup>179</sup> The exchange will result in a quickly-escalated, deadly exchange of gunfire.<sup>180</sup>

This argument fails for two reasons. First, critics cannot adequately compare the troubles of the security companies' "trigger-

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174. See U.S. DEPARTMENT OF JUSTICE, THE LAW ENFORCEMENT-PRIVATE SECURITY CONSORTIUM, OPERATION PARTNERSHIPS: TRENDS AND PRACTICES IN LAW ENFORCEMENT AND PRIVATE SECURITY COLLABORATIONS (2009) (analyzing the work of law enforcement and private security companies so that they might work together to ensure community safety).

175. See *id.* at 5 (explaining the purpose of the report).

176. See *id.* at 116 (creating these steps based on the exercise of law enforcement officers and private security contractors after conducting studies, focus groups, and interviews).

177. See Houreld, *supra* note 86.

178. See *id.* (explaining how pirates fire at the bridge of the ship in order to get the ship to slow down or stop so that the pirates can board it).

179. See *id.* (referring to the security companies in Iraq and Afghanistan blaming their operators for its negative reputation).

180. See *Most Ship Owners Still Reluctant to Arm Crews*, MSNBC (Apr. 9, 2009), [http://www.msnbc.msn.com/id/30141951/ns/world\\_news-africa/t/most-ship-owners-still-reluctant-arm-crews/#.TqC3Ut4Uqso](http://www.msnbc.msn.com/id/30141951/ns/world_news-africa/t/most-ship-owners-still-reluctant-arm-crews/#.TqC3Ut4Uqso).



happy" armed guards in Iraq and Afghanistan<sup>181</sup> with the security guards on merchant ships. While the security companies in the Middle East have quasi-governmental control and act as soldiers, the guards on merchant ships act as watchmen.<sup>182</sup> This is a much safer, lower-intensity job.<sup>183</sup> Private armed security guards create an intimidating presence, which deters pirate activity, much like the effect of a private security guard at a bank or jewelry store.<sup>184</sup>

The armed security guards on merchant ships are not at war with pirates.<sup>185</sup> Despite the classic view of pirates as *hostis humani generis* (an enemy of human kind), pirates more closely resemble criminals than combatants.<sup>186</sup> Pirates generally rob, pillage, and hold hostages for ransom for economic gain.<sup>187</sup> If the laws of war applied, pirates would either have to be treated as combatants, which would legitimize lethal force, or as civilians which would hinder actions to defeat piracy.<sup>188</sup> The rules of engagement do not appropriately address the laws governing the use of force in these incidences.<sup>189</sup>

Second, the weapons carried by armed guards present problems.<sup>190</sup> Armed guards are often only given shotguns in order to comply with the laws of the flagship and the ports.<sup>191</sup> Shotguns are no match for the pirates' long-range heavy weaponry that can fire 600 rounds per minute.<sup>192</sup> By equipping armed guards with the right weapons, the

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181. See Houreld, *supra* note 86 (referring to the security companies in Iraq and Afghanistan blaming their operators for its negative reputation).

182. See Interview with Eugene Kontorovich, *supra* note 120 (explaining how the operations of a security company in Iraq and Afghanistan do not resemble the security companies operation on a merchant ship at sea).

183. See *id.*

184. See Interview with LCDR Claude Berube, *supra* note 72.

185. See Interview with Eugene Kontorovich, *supra* note 120 (explaining how the operations of a security company in Iraq and Afghanistan do not resemble the security companies operation on a merchant ship at sea).

186. See Guilfoyle, *supra* note 127 (explaining the difference between describing pirates as combatants and describing pirates as criminals).

187. See Daxecker & Prins, *supra* note 17, at 9–12 (explaining the economic gains of piracy).

188. See Guilfoyle, *supra* note 127 (noting the harms of treating pirates as combatants).

189. See Interview with Eugene Kontorovich, *supra* note 120 (saying that "rules of engagement" is not correct because this is not a time of war).

190. See *Most Ship Owners Still Reluctant to Arm Crews*, *supra* note 180 (noting that the guns that comply with laws in different ports are generally short range and traditionally used for bird control).

191. See *id.*

192. See *id.*

armed guards will deter pirates from attacking the ship.<sup>193</sup> When pirates see armed guards onboard ships, they will pass by and look for an easier victim.<sup>194</sup>

In order to further address the critics' fears, government regulations can mitigate the risk of unwarranted violence.<sup>195</sup> For example, regulations about the appropriate use of force must be agreed upon and put in place by an organization such as the IMO. These regulations could provide for both simulated and classroom training. Upon completion of such training, a regulatory board could issue the armed guard with a license to serve as security on a merchant ship. With unified regulatory measures in place, armed guards will be able to serve as watchmen and protectors of merchant ships, fending off piracy with the appropriate amount of force.

2. Ports will not be more dangerous if armed guards carrying guns are allowed into ports.

Governments are concerned about the loyalty of foreign private security personnel in territorial waters and ports.<sup>196</sup> Some in the international community fear another Captain Kidd and the *Adventure Galley* incident in which a private contractor hired to combat piracy decided to turn to piracy himself.<sup>197</sup> Captain Kidd stole the ship and equipment provided to him by the state and resorted to the very career he was hired to defeat.<sup>198</sup>

Academics have confidence that security personnel will remain loyal.<sup>199</sup> In this modern era, security companies boast professionalism

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193. See Velleco, *supra* note 5; Interview with Michael Newton, Law Professor, Vanderbilt University, in Cleveland, OH (Nov. 11, 2011) (noting how "'gun-free zones' simply make easy targets for criminals").

194. See, e.g., *Live Piracy Report: Armed Guards Thwart Attack Attempt*, NEPTUNE MARITIME SECURITY (Jan. 24, 2012), <http://neptunemaritimesecurity.posterous.com/live-piracy-report-armed-guards-thwart-attack-8200>.

195. See Richard, *supra* note 35, at 454–55 (explaining how governments could put in place regulatory controls that the security companies must follow, and if these regulations are not followed, the government would impose consequences).

196. See Gordon Corera, *Analysis: Somali Piracy: Armed Guards to Protect UK Ships*, BBC, Oct. 30, 2011, <http://www.bbc.co.uk/news/uk-15510467>.

197. See Richard, *supra* note 35, at 412–13. In 1696, the *Adventure Galley*, a merchant ship, was fitted with guns and weapons to hunt down pirates. After being unsuccessful, Captain Kidd resorted to piracy. *Id.*

198. See *id.*

199. See Interview with Michael Newton, *supra* note 193; Interview with LCDR Claude Berube, *supra* note 72.

and maritime skills.<sup>200</sup> Countries can protect their interests by requiring security guards to obtain licenses and pay licensing fees.<sup>201</sup> For example, Djibouti requires security companies to obtain licenses.<sup>202</sup> Countries can also put other regulations in place such as requiring ships to place guns in a locker when a ship pulls into port.<sup>203</sup> Officials from the port country can then check and secure the lockers once the ship has arrived in port.<sup>204</sup>

3. Armed guards are not mercenaries.

Some critics feel hired armed guards on merchant ships qualify as mercenaries under international law, but this is untrue. Article 47 of the Geneva Convention defines a mercenary as a person who is recruited to fight in armed conflict that does not belong to a party of the conflict or the forces of that party, has not been sent by the state, and is motivated by private gain to fight.<sup>205</sup> Critics object to armed

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200. The International Association for Maritime Security Professionals provides a code of practice and a Constitution for the Industry. See *Membership Criteria*, INT'L ASSOC. FOR MARITIME SECURITY PROFESSIONALS, <http://iamsponline.org/membership/membership-criteria/> (last visited Mar. 9, 2013). With the current world trend to downsize militaries, security companies hire former Marines who bring professionalism and maritime security knowledge from their previously serves in the military. See Interview with Eugene Kontorovich, *supra* note 120.

201. See Interview with LCDR Claude Berube, *supra* note 72.

202. See *id.* (noting one country that already requires licensing). Criticism emerged when rumors circulated that Djibouti licensed the troubled security company Blackwater. See, e.g., Simon, *Blackwater Counter-Piracy in Djibouti*, CROWDLEAKS, <http://crowdleaks.org/blackwater-counter-piracy-in-djibouti/> (last visited Jan. 29, 2011). However, through two name changes and management turnover, the security company bears little resemblance to the troubled company operating in Iraq. Nathan Hodge, *Company Once Known as Blackwater Ditches Xe for Yet Another New Name*, WALL ST. J. (Dec. 12, 2011), <http://online.wsj.com/article/SB10001424052970204319004577089021757803802.html>.

203. See Interview with LCDR Claude Berube, *supra* note 72 (providing other suggestions to ease countries' anxiety about armed guards within their ports).

204. See *id.*

205. See Geneva Convention on the High Seas, art. 47(2), Apr. 29, 2958, 450 U.N.T.S. 82. Article 47 provides:

A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf

guards on merchant ships, claiming that armed security guards act as mercenaries and that the function of using lethal force belongs to the state alone.<sup>206</sup>

Armed guards act as peacekeepers by deterring hostilities through their intimidating presence. Private actors serving in a peacekeeping role do not act for the state.<sup>207</sup> For instance, companies regularly hire private guards to protect banks, museums, hospitals, and other entities.<sup>208</sup> U.S. courts deem private police for these entities as state actors when they have been entrusted with complete police authority.<sup>209</sup> But when complete police power is not transferred to the private police officer, courts hold the private police officer does not act as a public actor.<sup>210</sup> For example, the Chicago Housing Authority hired a security guard in *Wade v. Byles* to provide security services to the residents of an apartment building.<sup>211</sup> The guard was authorized to carry a handgun and use it in self-defense, but if trouble arose in the lobby, the security guard was required to call the police.<sup>212</sup> The security guard was not authorized to leave the lobby area in pursuit of anyone.<sup>213</sup> The limited scope of the security guard's authority precluded him from being deemed a state actor.<sup>214</sup>

Courts also note the legitimacy of a private security team's authority under the "shopkeepers privilege."<sup>215</sup> Individuals have a

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of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

*Id.*

206. See, e.g., Bolsover, *supra* note 81 (noting the objection to armed guards on merchant ships by the German Free Democrats Party).

207. *Wade v. Byles*, 83 F.3d 902, 905 (7th Cir. 1996) (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982)) ("The simple fact that a private entity performs a function that serves the public does not transform its conduct into state action.").

208. See Interview with LCDR Claude Berube, *supra* note 72.

209. *Romanski v. Detroit Entm't, L.L.C.*, 428 F.3d 629, 637 (6th Cir. 2005).

210. *Id.*

211. *Wade*, 83 F.3d at 903.

212. *Id.* at 904.

213. *Id.*

214. *Id.* at 906.

215. *Romanski v. Detroit Entm't, L.L.C.*, 28 F.3d 629, 638 (6th Cir. 2005).

right to protect personal property and are motivated to do so by self-interest.<sup>216</sup> "A storekeeper's central motivation in detaining a person whom he believes to be in the act of stealing his property is self-protection, not altruism."<sup>217</sup> This self-interested act cannot be attributed to the state action.<sup>218</sup>

Unlike mercenaries who are recruited to fight offensively, armed security guards are recruited to protect using defensive measures.<sup>219</sup> Armed security guards do not engage pirates in war; they are protecting ships from criminals.<sup>220</sup> Armed security guards should be entrusted with limited powers like the armed guard in *Wade v. Byles* whose scope of protection was limited to the lobby.<sup>221</sup> The armed guards should be limited to protecting ships, and if hostilities arise, then the armed guards should be required to call the proper protective authority—a country's navy.<sup>222</sup> Without full authority as a state actor, the private security guards do not qualify as mercenaries.<sup>223</sup>

## V. CONCLUSION

With a global economy that is highly dependent on the shipping industry, piracy is a very serious problem in modern society.<sup>224</sup> The world's navies must continue efforts to protect against piracy. The absence of a naval presence would cause an even greater resurgence of pirate activity.<sup>225</sup> Piracy cannot be stopped by the efforts of navies alone. The free market must be permitted to provide assistance.

Armed security guards can be an effective addition to navies in achieving a solution to the piracy problem. Before this can happen legal obstacles must be dismantled. The most appropriate and effective way to do this is through a collaborative world effort. The IMO's authority in maritime safety makes it the perfect organization

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216. See *Chapman v. Higbee Co.*, 319 F.3d 825, 834 (6th Cir. 2003).

217. *Id.* (quoting *White v. Scrivner Corp.*, 594 F.2d 140, 142 (5th Cir. 1979)) (finding a Dillard's security officer did not act as a state actor when he stopped a customer suspected of shoplifting).

218. *Id.*

219. See Richard, *supra* note 35, at 461.

220. See *id.* at 462.

221. See *Wade v. Byles*, 83 F.3d 902, 904 (7th Cir. 1996).

222. See *id.* (noting the security guards duty to call the police when a person refused to leave the lobby of the residence).

223. See Richard, *supra* note 35, at 459.

224. See Daxecker & Prins, *supra* note 17, at 5 (noting that pirates create devastating, worldwide impacts).

225. See Interview with LCDR Claude Berube, *supra* note 72.

to initiate this effort.<sup>226</sup> With assistance from coastal states, shipping companies, flagship states, and security companies, the IMO's Maritime Safety Committee can create a set of guidelines to enable merchant ships to hire armed security guards. These guidelines can include protective measures such as licensing schemes and shipping port regulations to ease critics' fears about the potential dangers of allowing armed security guards on merchant ships.<sup>227</sup> The guidelines can then be adopted by the member states of the IMO and implemented by each member country.<sup>228</sup> The implementation of these regulations will equip armed security guards to assist the navies' efforts. With these unified legal changes, ships that were previously attacked, like the *Maersk Alabama*, will be able to utilize armed security guards to deter and fend off pirates.

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226. See *History of IMO*, *supra* note 149 (noting its involvement in promoting safety at sea).

227. The IMO has already developed regulations including the Djibouti Code of Conduct in its efforts against piracy. See *Piracy and Armed Robbery Against Ships*, INT'L MARITIME ORG., <http://www.imo.org/MediaCentre/resources/Pages/Piracy-and-armed-robbery-against-ships.aspx> (last visited Mar. 9, 2013). The regulations developed by the IMO regarding armed guards could resemble the adoption of the Djibouti Meeting or be an addition to the Djibouti Code of Conduct. See *generally Djibouti Code of Conduct*, INT'L MARITIME ORG., <http://www.imo.org/OurWork/Security/PIU/Pages/DCCoC.aspx> (last visited Mar. 9, 2013). The regulations can also offer guidelines for licensing schemes for private security companies, simulated and classroom training for armed guards, and regulations for firearms in ports.

228. See *IMO Member States*, INT'L MARITIME ORG., <http://www.imo.org/About/Membership/Pages/MemberStates.aspx> (last visited Mar. 9, 2013) (listing the IMO member states).

APPENDIX A: REGULATIONS REGARDING ARMED SECURITY  
 GUARDS’ FLAGSHIP COUNTRY

Country	Can Flagships Have Armed Security Guards?
Egypt	Yes <sup>229</sup>
Germany	Yes <sup>230</sup>
Greece	Yes <sup>231</sup>
Italy	Yes <sup>232</sup>
Japan	No <sup>233</sup>
Liberia	Yes <sup>234</sup>
Marshall Islands	Yes <sup>235</sup>
Netherlands	No <sup>236</sup>
Panama	Yes <sup>237</sup>
South Africa	Yes <sup>238</sup>
United Kingdom	Yes <sup>239</sup>
United States	Yes <sup>240</sup>
Yemen	No <sup>241</sup>

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229. *Piracy: Somalia and the Gulf of Aden—Updates*, NORTH (Nov. 21, 2011), <http://www.nepia.com/publications/industrynews/ships/africa/795/>.
230. See Bolsover, *supra* note 81.
231. *Greece Will Allow Armed Guards on Ships to Protect from Pirates*, DEFENCEWEB (Nov. 28, 2011), [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=21594:greece-will-allow-armed-guards-on-ships-to-protect-from-pirates&catid=51:Sea&Itemid=106](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=21594:greece-will-allow-armed-guards-on-ships-to-protect-from-pirates&catid=51:Sea&Itemid=106).
232. *Somali Piracy: 2011 Annual Update*, STRATFOR GLOBAL INTELLIGENCE (Jan. 13, 2012), <http://www.stratfor.com/analysis/somali-piracy-2011-annual-update> (allowing ships to rent military when they travel through Somali pirate waters).
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. *Id.*
238. *Somali Piracy: Somalia and the Gulf of Aden—Updates*, *supra* note 226.
239. *Somali Piracy: 2011 Annual Update*, *supra* note 232 (allowing armed guards in the Somali pirate region).
240. See Shapiro, *supra* note 84 (announcing support for armed security guards for the protection against pirates).
241. *Yemen Bans Armed Guards on Ships*, ALSAHWA-YEMEN (Jan. 19, 2012), <http://www.alsahwa-yemen.net/arabic/subjects/5/2012/1/19/15472.htm>.

APPENDIX B: REGULATIONS REGARDING THE ABILITY OF  
 ARMED SECURITY GUARDS TO ENTER TERRITORIAL  
 WATERS AND PORTS<sup>242</sup>

Country	Port Regulations	Territorial Water Regulations
Australia	<ul style="list-style-type: none"> <li>Requires notification regarding:               <ul style="list-style-type: none"> <li>when a ship intends to enter or depart from port;</li> <li>the flag country’s authorization of firearms;</li> <li>information on the firearms onboard; and</li> <li>information about the armed guards, for example the armed guards must have the appropriate visa.</li> </ul> </li> <li>To embark or disembark with weapons is treated as an import or export of the weapons.</li> <li>Possession and storage requirements are developed by the Commonwealth and State and Territory legislation.</li> </ul>	<ul style="list-style-type: none"> <li>Notification, authorization, and storage information regarding firearms to appropriate agency is often required.</li> <li>Security related incidents in territorial seas must be reported.</li> </ul>

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242. See *Responses Received on PCASP*, INT’L MARITIME ORG., <http://www.imo.org/ourwork/security/piracyarmedrobbery/pages/responses-received-on-private%20armed%20security.aspx> (last visited Mar. 9, 2013) (posting the different questionnaires that have been returned to the IMO).



Brazil	<ul style="list-style-type: none"> <li>• Requires 72-hour notice to the Brazilian Public Authority of:             <ul style="list-style-type: none"> <li>- the security team and firearms on board;</li> <li>- authorization documents for the security team and firearms from the flag country;</li> <li>- declaration of the quantity and type of firearms, including the ammunition, consumables, spare parts, and maintenance equipment used by the security team; and</li> <li>- a list of security team members.</li> </ul> </li> <li>• The embarkment or disembarkment of firearms is not allowed.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirements for ships carrying firearms leaving a port.</li> <li>• A detailed account of a security related incident must be reported to the Brazilian Public Authority as soon as the incident occurs.</li> </ul>
France	<ul style="list-style-type: none"> <li>• Requires 48 hour notice to the CROSS Reunion of the:             <ul style="list-style-type: none"> <li>- date and estimated arrival time of the ship in the territorial waters;</li> <li>- planned date and time of departure from territorial waters;</li> <li>- complete list of weapons and ammunition kept on board;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Same notification requirements for ships coming into its port.</li> <li>• Armed persons must not be visible on the exterior of the ship.</li> <li>• Weapons and ammunition must be kept in separate lockable places.</li> <li>• Declaration of</li> </ul>

	<ul style="list-style-type: none"> <li>- identity of persons responsible for safekeeping and name and address of company to which they belong.</li> <li>• No requirements regarding notification of flag country authorization.</li> <li>• Regulations for embarking and disembarking with weapons are “complex” and the country is evaluating the different scenarios.</li> </ul>	security incident in territorial waters must be reported as soon as the incident happens. <sup>243</sup>
<b>Hong Kong</b>	<ul style="list-style-type: none"> <li>• Requires 24-hour notice to the Marine Department of the Hong Kong SAR regarding information about firearms and ammunition.</li> <li>• The firearms and ammunition must remain on board in a locked container while in port.</li> <li>• No requirements for notification about the members of the security guard team.</li> </ul>	<ul style="list-style-type: none"> <li>• Hong Kong has no territorial waters.</li> </ul>
<b>Mauritius</b>	<ul style="list-style-type: none"> <li>• Requires 24 hours (preferably 48 hours) notice to the Mauritius Revenue Authority of:                             <ul style="list-style-type: none"> <li>- all the particulars of the firearms, such as model numbers, serial numbers, and caliber;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Foreign private security companies need to obtain prior authorization from the Government of Mauritius to operate in</li> </ul>

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243. These incidents could only occur because of non-compliance with weapons regulations.

	<ul style="list-style-type: none"> <li>- the quantity and type of ammunition;</li> <li>- a list of guards with their full names, passport number, and nationality;</li> <li>- an authorization letter from the Commissioner of Police for authorizing transit and storage of firearms and ammunition through territorial waters.</li> <li>• All weapons must be stowed while the ship is in port.</li> <li>• Embarkment and disembarkment of weapons from private security guards is allowed with written authorization from the Commissioner of Police and with a list of the firearms and ammunition.</li> <li>• Flag country's authorization of the weapons is required.</li> </ul>	<p>territorial waters at least one month in advance.</p> <ul style="list-style-type: none"> <li>• The use of the weapons is prohibited in territorial waters.</li> <li>• Any security related incidents in territorial waters must be reported as soon as it occurs and no later than thirty minutes after it occurs.</li> </ul>
<b>Panama</b>	<ul style="list-style-type: none"> <li>• No notification requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Required to report a security incident to the port facilities immediately after the incident occurs.</li> </ul>
<b>Spain</b>	<ul style="list-style-type: none"> <li>• Requires 24-hour notice of weapons according to Article 68.1 of the Weapons Regulation.</li> <li>• No specific notification required regarding the private security team onboard.</li> </ul>	<ul style="list-style-type: none"> <li>• No requirements in place for weapons on a ship arriving or departing from ports.</li> <li>• Security incidents must</li> </ul>

	<ul style="list-style-type: none"> <li>• No notification of flag country authorization required.</li> <li>• Embarkment is only permitted for Spanish private security companies and for ships traveling under the Spanish flag.</li> </ul>	<p>be reported as soon as possible and must include an account of facts, including the weapons, personnel, ship and location of the incident.</p>
<p><b>United States</b><sup>244</sup></p>	<ul style="list-style-type: none"> <li>• Notification of firearms held by private security teams must be given.</li> <li>• Information regarding the private security team members must be given.</li> </ul>	<ul style="list-style-type: none"> <li>• Incidents must be reported to the Customs Boarder Protection Port Director as soon as they occur and must include location of the incident, description of what occurred, and the parties involved.</li> </ul>

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244. In the questionnaire, the United States referred the questions to the appropriate departments of the government or regulations and did not specifically answer the questions.